

13203 PL-1
Mr. Fitzmaurice



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-197036

DATE: March 21, 1980

MATTER OF: Alan Scott Industries

DIGEST:

[ALLEGATION THAT Specifications were Inadequate]

DLA 800085
AGC00847

Where protester alleges that procuring agency has failed to provide adequate specifications, drawings, or samples to permit competition, but fails to furnish any evidence to support allegations, protest is denied since burden is on protester to substantiate case, and record completely supports agency position rebutting protest.

Alan Scott Industries (ASI) protests any award of a contract under request for proposals (RFP) No. DLA120-80-R-0513, issued by the Defense Personnel Support Center (DPSC), Defense Logistics Agency (DLA), Philadelphia, Pennsylvania. ASI alleges:

"1-Government failure to provide proper drawing to cover solicitation.

"2-Government refusal to provide valid sample in lieu of non-existent proper drawing.

"3-Government failure to provide proper specifications in lieu of reference MIL-P-37089 which must be judged as restrictive without cause with allowance for subjective evaluation."

In addition, ASI asserts that DLA's procurement methods have resulted in improper sole-source awards.

For the reasons indicated below, we find ASI's protest to be without merit.

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The RFP called for the procurement of dental pliers to be manufactured in accordance with Specification Data Sheet No. 1, dated February 16, 1978, which incorporates by reference Military Specification MIL-P-37089, dated June 18, 1975. The military specification incorporated appropriate drawings.

Regarding ASI's first allegation, DLA maintains that it is ambiguous, thereby requiring an answer in the alternative. DLA believes that, if ASI is arguing that no drawing was provided, the argument is without merit because, although no drawing was actually included with the solicitation, the RFP clearly advised potential offerors of the availability and location of specifications and drawings. DLA concludes that, since it stated the requirements clearly and informed offerors where to obtain specifications and drawings, it had no legal obligation to furnish these items as part of the solicitation package. To support its position, DLA cites a prior decision of our Office where we denied a similar basis of protest by ASI against the conduct of a prior procurement. See Alan Scott Industries, B-193530, April 27, 1979, 79-1 CPD 294. If ASI is arguing that the drawings were not "proper," DLA maintains that this argument cannot be addressed since ASI does not provide any specific reasons for this alleged impropriety. The agency points out that the drawings have been utilized in substantially the same form for the past 15 years. Further, during that timeframe, four different contractors have supplied the solicited products and none have expressed any objection to either the specifications or drawings.

Regarding ASI's allegation that the Government refused to provide a valid sample in lieu of a proper drawing, DLA reiterates that drawings were available for prospective offerors to examine, and it is also unaware of any defects therein. If, by this allegation, ASI means that the Government is legally obligated to provide samples of the end products, DLA states it is unaware of any such obligation. But, even though there is no legal obligation, DLA notes that samples of end products were available for inspection and the DPSC Master Solicitation informed prospective offerors of this fact.

DLA finds ASI's third allegation "virtually impossible to interpret." To the extent it can be interpreted to mean that the Government failed to provide a proper specification, DLA reiterates that the specification and drawings have been utilized over a significant period of time to procure the same products and that none of the prior contractors has objected to the specifications or drawings or has had any apparent difficulty complying. If this allegation is to be interpreted as complaining that the specification is unduly restrictive of competition, DLA states that ASI's refusal to submit details in support of the protest makes it impossible to respond.

Finally, regarding ASI's claim of sole-source awards, DLA notes that these products have been procured from a number of different sources in the past. Moreover, DLA points out that this particular procurement is competitive.

Based on the foregoing arguments, DLA believes that the protest should be denied. We agree.

The protester has the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.-- Request for Reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. Moreover, our Office will not conduct an investigation to establish whether a protester's speculative statements are valid. Bowman Enterprises, Inc., B-194015, February 16, 1979, 79-1 CPD 121.

Here, ASI has not furnished any evidence in support of its general allegations. In Alan Scott Industries, supra, our Office denied prior ASI general allegations against alleged unduly restrictive specifications because the firm failed to be specific. On the other hand, DLA interpreted ASI's allegations to the extent possible and presented evidence in rebuttal. The record supports DLA's position in all respects. In response, ASI essentially ignored DLA's position and merely restated its initial protest position. In light of this, we must conclude that ASI has failed to meet the burden of affirmatively proving its case.

Protest denied.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

For The Comptroller General
of the United States